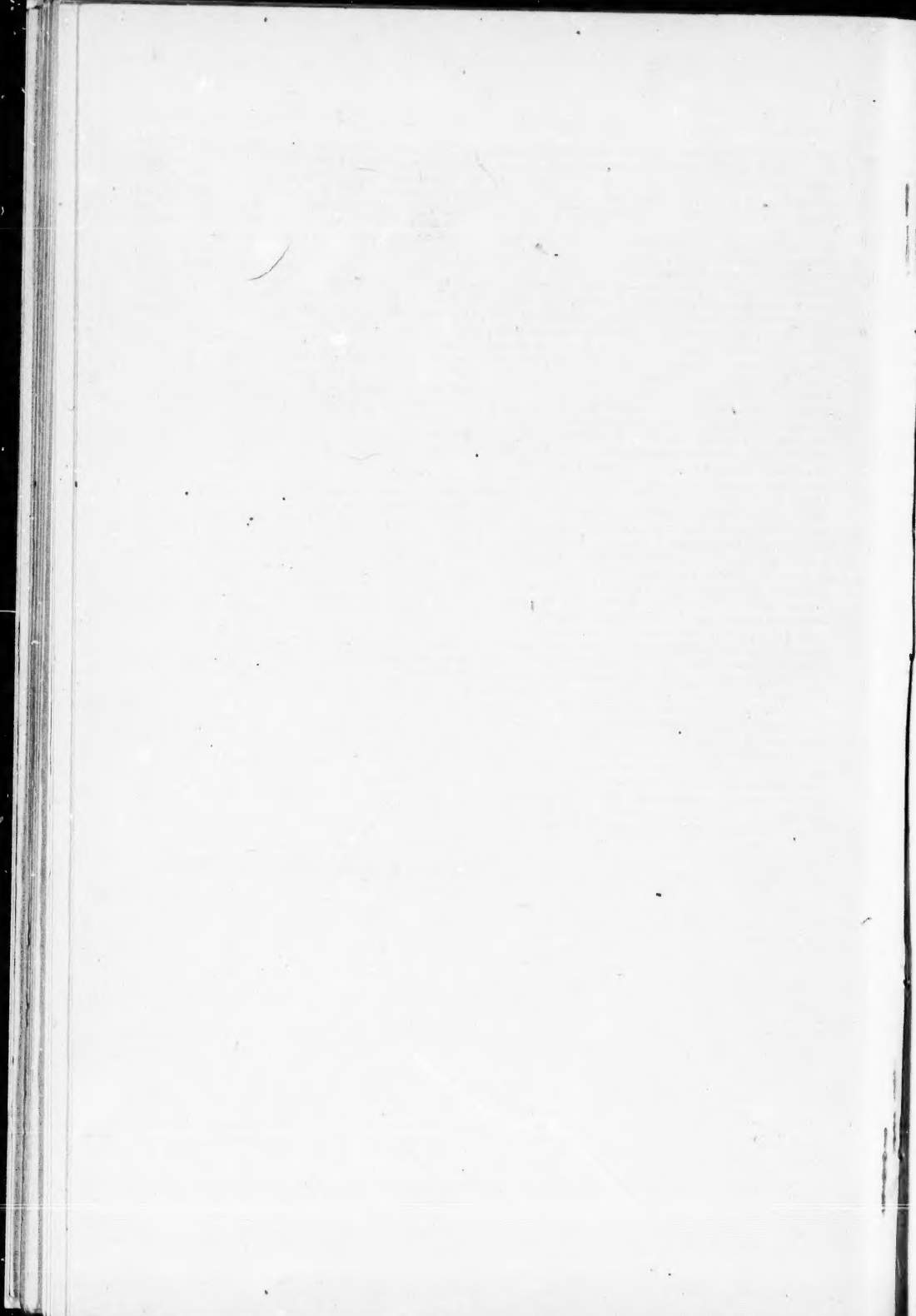




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House of Commons Debates

FOURTH SESSION—SIXTH PARLIAMENT.

SPEECHES OF HON. EDWARD BLAKE, M.P., ON THE BANKING BILL.

THURSDAY, 1ST MAY, 1890.

SECURITY ON CHATTELS.

On section 66,

Mr. BLAKE. It does not appear to me that this is an advantageous addition. I do not think there is any use of inserting words which can very easily be evaded, and the practical effect of which will be to introduce a system of evasion. Under the present law, although a bank is not entitled to advance on the security of its stock, if it does advance upon other security, it obtains a certain statutory lien—at any rate, it has the right to say that the stock shall not be parted with until the debt is paid. The proposal now is to say that that right shall not accrue until the debt has become due. The practical result of that will be just this, that you will have a fictitious system of loaning; you will have a due bill or a sight draft or a demand note representing the loan, and a demand made at once, and a debt becoming due at once, but left lying until the time comes when it is understood tacitly that the borrower shall settle it. The clause can be overcome by that easy and simple process, so that all you are doing is to promote a fictitious set of transactions.

On section 74,

Mr. BLAKE. That was one of the questions. There was also a question raised as to whether it was a good warehouse receipt, because it was given by the owner himself.

Sir JOHN THOMPSON. The hon. gentleman said that his remarks would apply to all the warehouse receipt clauses. In view of the decision in the Smith case, this clause might stand.

Mr. BLAKE. I do not suppose that the hon. gentleman proposes that we should even formally pass the very important clauses which add to the lien power of banks. I think we had better let them stand instead of passing them and coming back to them again.

Sir JOHN THOMPSON. I was referring to the request of the member for Quebec Centre (Mr. Langelier), to allow that clause to stand.

On section 75,

Mr. BLAKE. I think that clause demands some exposition.

Mr. BLAKE. I would like to know from the hon. Minister of Justice precisely in what regard he considers that this clause restricts the powers which are found to exist under the present law, and whether there is any particular, and if so, what, in which he thinks the clause extends the powers that exist under the present law?

Mr. BLAKE. Will the hon. gentleman explain this clause by giving us a few examples of what he means by the "wholesale producer" as distinct from the "wholesale manufacturer"?

Mr. BLAKE. The section reads: "a wholesale manufacturer or producer of any goods, wares and merchandise." On turning back to the interpretation clause, I find that:

"The expression goods, wares and merchandise, includes, in addition to the things usually understood thereby, timber, deals, boards, staves, sawlogs, and other lumber, petroleum, crude oil, and all agricultural produce and other articles of commerce."

We have thus the wholesale manufacturer or producer of agricultural products, as well as of other things; and, therefore, the section seems to me to include the whole farming community, unless the term "wholesale" is to except the whole farming community; or if it is partly to except and partly to include, I would like the line of demarcation drawn.

Mr. BLAKE. The object I had in view in asking my question was to obtain the opinion of the Administration as to the meaning of the clause, as it now stands. I am strongly impressed with the view that the clause, in its present shape, accomplishes the object desired by the hon. member for Frontenac. Whether it be laudable or advantageous to the farming community and the country, or not, may be more disputable, but it accomplishes the object. I am not versed in these things, but I suppose that the wholesale manufacturer is the person who manufactures for sale in bulk to those who sell in retail to others. He is the person whose

goods reach the ultimate consumer, not directly but through an intermediary distributor. That I understand to be the wholesale manufacturer. To the wholesale producer the same interpretation will apply. He is the man who produces articles which he does not, as a rule, proceed himself to retail directly to the ultimate consumers, but which, in whole or part, he disposes of in bulk to some intermediary, who is the vehicle of transmission to the ultimate consumer. Every farmer, or almost every farmer in the country, is a wholesale producer under that definition. His cattle and grain may go to England, or the States, or to the towns of Canada; his products may go through half a dozen hands in bulk before they reach the man who eats them. Therefore it is, I ask what was intended by this clause? What is the line of demarcation? If in the term "wholesale producer" you include the producer of agricultural products, what farmer does the clause include, and what farmer does it exclude? It may exclude the small market gardener, who, having "three acres and a cow," proceeds daily through the streets of the city near where he lives, and peddles his goods from door to door, and so, himself producing, reaches himself with his produce the ultimate customer; but, even as to him, if he goes into a market town and sells those very articles to a huckster, or another vendor, who is the intermediary between the producer and the consumer, I do not know on what principle you can call even a small-market gardener other than a wholesale producer. So it seems to me that practically, although with, perhaps, great profit to the legal fraternity as to determining the exact line of demarcation, and with the prospect of many interesting law-suits before the question shall be determined definitely and substantially, the whole farming community are to be the recipients of those countless blessings which the hon. member for Frontenac (Mr. Kirkpatrick) would ask this House to shower on their heads. At present we should first know what it is proposed to us to do, and then we can discuss the question on its merits.

Mr. BLAKE. Once again, I repeat the suggestion that our discussion would be confined in much more practicable limits if we could learn first whether it is the intention of the Administration to propose to us by the clause, that which the hon. member for Montreal (Sir Donald Smith) has just advocated, and which the hon. member for Frontenac (Mr. Kirkpatrick) and the hon. member for Grey (Mr. Sproule) think so desirable, namely, that the farmer should be in a position in which he can, by a security note of this description, unregistered, grant to a bank security for advances upon articles which he produces.

Mr. BLAKE. I would ask the hon. gentleman whether in view of the suggestions I have made that the interpretation clause expressly includes agricultural products, and that you thus find the phrase to be "wholesale producer of agricultural products"—whether he does not think that almost all persons who come under the denomination of farmers are embraced within this provision at this moment?

Mr. BLAKE. I think the decision which is referred to is based, as far as that subject is expressly dealt with, upon the article of jurisdiction to which the hon. gentleman has alluded, namely, banking;

and it is founded upon an expression used in the case of *Cushing vs. Dupuy*, which is there cited, and to which we had reference the other evening. I think that some force is certainly due to the consideration which the Minister of Justice has addressed to us, namely, that for a great many years, ever since Confederation, more or less, we have assumed this power, and the assumption has been accepted to a very large extent in the practical execution of the business of the country, by the banks and by the public at large. But when we are called upon to deal with enlargements of the proposition, when we are called upon to go a great deal further, as it is now claimed we have been, perhaps, unconsciously called upon to go, and as we are in fact clearly, by the proposition now before you, called upon consciously to go, it is perhaps well to direct attention to the alarming consequences to which, stretched to the extent to which they are proposed to be stretched, that proposition extends; because, you will see that if it is to apply to the case of the farmer, it may be very proper, and equally within our power to apply it, so far as banking purposes are concerned, to the case of every person who owns any tangible thing whatever. And it is being proposed to be extended, and it is, in the judgment of the Minister of Justice and of my own, whatever the latter may be worth, by this clause now extended to certainly very much the largest single class, and to a class probably equal to one-half of the whole of the community at this moment. And, therefore, you have it, I do not mean to say, with respect to all the goods belonging to that class, but with respect to the goods they produce, that the general principles of law in all the Provinces, so far as I know, principles founded upon a fundamental proposition as to public convenience, in which the masses of the community are interested, with respect to the degree of credit which is attached to the visible possession of personal properties and to the securities which are required to avoid mistaken credit being extended, are to be wholly departed from. I agree in the general principle which the hon. Minister of Justice has stated, in defining what was understood to be the intention of this clause. I can quite well understand that under the general interpretation of the term there may be very great difficulties, twofold in their character, in carrying out in practice, as applied to manufactures, the general principle of non-recognition of a claim on or of conditional ownership in property not in the visible possession of the claimant. The first difficulty is the constant mutation of the object, the log being transferred into lumber, the fleece being turned into cloth; and so forth; and lumber, cloth and so forth being constantly sold to the public, and replaced by the manufacturer; and the second difficulty is the difficulty of credit to which the hon. gentleman adverted. I can well understand and appreciate as sound the proposition that, so long as you are able by your definition to point the attention of the general public to this fact, that the law declares that in the case of certain persons the visible ownership of the stock in trade does not give you the slightest security that he really owns that stock; that it may be all the property of a bank, and may be mortgaged for more than it is worth; and that you, therefore, are not entitled to give him credit on his visible possession of it; you may

in that way get rid of, or minimise at all events, the inconvenience which is generally felt throughout those portions of the world which adopt our principle of jurisprudence to arise from the recognition of the principle of ownership, conditionally or otherwise, apart from the visible possession or notoriety of claim. But if you are going to adopt a provision so extensive as that now suggested, you must consider what the convenience of the farmer is, and it is in the light of his convenience as a class that you must consider it; and you must also consider the enormous change you are going to make in the Provincial regulations with respect to the ownership of property. It is not to a small class or for particular circumstances, but, substantially, to a very large proportion of the persons and with respect to a very large proportion of the property owned throughout the whole of Canada to which the new principle is to apply, not indeed the principle that the farmer shall not be able to secure a loan from anyone upon his property—it would be monstrous to say he should not—but the principle that the farmer shall be deprived of the credit and facility for obtaining money and supplies which exist under the present law. Because no man, after your proposed change takes place, can tell whether a farmer really owns one bushel of the grain in his barn or any of the cattle in his stable. They cannot go anywhere to find out this information; they cannot go to any place where there is a register of the chattel mortgage, and they cannot ascertain anything about it; but there may be a note in some bank, which we will not call a "shaving" shop, which is said to be the farmer's present resource, which note really represents the goods. That is one aspect of the case. The other aspect of the case is that it is proposed to effect, not merely a partial innovation, to a limited extent and for defined reasons, upon the ordinary law as to personal property, but it is proposed practically to revolutionise that law; and then you come necessarily to the consideration as to how far it was really intended, under the constitutional power, to legislate on "banking," that you should thus interfere with the right of the Provinces to regulate the disposition of personality and indeed of real property as well. I know no reason, none in the world, why, if this power does exist, you might not apply it to the land. I do not know why you cannot say by another sub-section that by a note of hand or by a verbal promise made by a farmer to a bank, a mortgage may be made on his land. The legislative rights of the Provinces cover property and civil rights. The same words embrace both, and you may as well, so far as the jurisdictional question is concerned, provide for an oral charge upon lands by the farmer or the owner in favor of a bank or for a parcel charge or a charge by an instrument not under seal and not registered. So this opens a very large question, and it is sufficient to say that while I would acquiesce in the view of the hon. gentleman, reserving my personal opinion as to this question—while I would acquiesce in the view that he might not unfairly call on this Parliament to re-enact substantially those provisions which have been assumed to be the law of the land, in regard to which there is some color of support, at all events of judicial authority, yet when the Minister of Justice calls upon us to make a change so extensive as the change which now appears to be clearly

involved in the amendment, we are bound to consider the whole question, seeing that we are further invading the Provincial power, however strong the position of the Province may be, by the proposed application to these new conditions of the propositions we are invited to accept. With respect to the question of the farmer's advantage to be obtained by this extension, I suppose that the great bulk of the representatives of this House are representatives of rural districts or of districts in which the farming community forms a great majority. I suppose they have at heart the interests of those classes of their constituents, and no suggestion to do them a real benefit could possibly meet with anything else than the most respectful attention and the most earnest desire to give it effect. The question whether you can provide cheap money and easy money for the farmer is a question which has puzzled so-called theorists and speculators upon financial questions for a long time. You have had the proposition of the land bank, the proposition for farmers' banks, the proposition for a national currency based upon the land, or an irredeemable currency, you have had numerous proposals to help the farming community to cheap and easy money; but the conditions upon which cheap and easy money are to be obtained are absolutely opposed to the principles which, in regard to the production and manufacture of goods, are found to be sustained by this House and by this country at the present day. It is the law of supply and demand and of free competition, which is the vital and effectual law in this regard. The moment the farmer can show that he can give the same prospect of a return, with the same rapidity, with the same advantage, with the same security that other competitors for the stock of available money can give, he will get all the money he wants; and to the extent to which he cannot show that he will never get it; and if this Parliament sit from now to Christmas, it will never be able to give it to him.

Mr. SPROULE. Yes; it has been done in Germany.

Mr. BLAKE. How?

Mr. SPROULE. There are farmers' banks there.

Mr. BLAKE. I am not talking of farmers' banks. The hon. gentleman says he knows about it—and he knows about everything—but he told us himself that the farmers have been considering the question of farmers' banks for a long time, and that they have not been able to find the way of working them; nor has the hon. gentleman done so. I advise him to go to Germany and find out.

Mr. SPROULE. The hon. gentleman may have as much time at his disposal to go there and find out as I have.

Mr. BLAKE. I will try and find out the next time I am there. In the meantime, as we have not the information from Germany, and as the condition of German farmers, and the condition of German operatives, and the condition of German society, and the condition of German manufacturers, and the condition of German politics at this moment, is not the most favorable in the world, we had, perhaps, better not attempt to find light from Germany, for the purposes of this debate at all events, and proceed to consider what else we can do. The present proposal is not to

find the money in Germany or to adopt the plan of Germany; but it is to establish it by arranging—although I do not think that would be the effect of the hon. gentleman's amendment—that the farmer may be able by this cheap and easy process to pledge his property to the bank. I think that the hon. gentleman's amendment, which simply says that the farmer may obtain money upon the security of his property, is an amendment which does not alter the position of the farmer one whit. He can now obtain money upon the security of his property if he only finds any one who will lend it to him. There is no objection at present to his giving a chattel mortgage or to his giving security, according to the Provincial law, to private lenders. The question is what the advantage or detriment to him may be, if the provision be introduced which permits him to give a security note to a bank, instead of a chattel mortgage to a private lender, which security note puts him, as an agricultural producer, in the same position as the producer of other produce, or the manufacturer of other goods. The position of the farmer then will be just this: By his giving a security note, that is to say, without divulging to the rest of the world that he is giving a mortgage—he will be able to secure the bank for the advance. That is all that can be proposed in this regard, and the question we have to consider is, would this be to the advantage of the great mass of the farmers, who, I am happy to believe, do not want to borrow upon personal security, but who do want to be able to retain and use that security in their ordinary transactions which is due to the realisation of the fact by those with whom they deal, that they are the owners of certain property, upon which general credit they are supplied with goods and given money. The general basis of credit which the farming community enjoy at present would be destroyed by this proposal, and any advantage which it may give them will be counterbalanced, far more than counterbalanced by this loss. My own opinion is that the mass of the farming community would be seriously damaged by this proposal. I believe there would arise a degree of uncertainty with regard to the ordinary basis of credit, in reference to the whole farming community of the country which would be most calamitous, and that instead of helping the farmer, we would do him a serious injury. I do not think it makes much difference to the banks at all, for it is not so much a banking question; but as far as the interest of the farmer is concerned, I believe he is better off as he is now, than he would be if this amendment were introduced into the clause.

Mr. BLAKE. I did not say that the security notes were so much worthless paper.

Mr. KIRKPATRICK. The hon. gentleman said it was an infringement of civil rights, and that in order to become a security, there must be a registration or a visible change of the property.

Mr. BLAKE. What I pointed out was that it was highly questionable, in my present judgment, whether we had the power to so interfere with the Provincial laws on this subject; but discussing the policy with respect to the farmer, I assumed, both in his case and in the case of the manufacturer, that the security note would be valid, because, if void, it would make no difference.

Mr. KIRKPATRICK. First, it was highly doubtful whether it was worth anything; and, in the second place, it was injuring the credit of the farmer. If it injures the credit of the farmer, it injures the credit of the manufacturer, and, therefore, the clause is altogether objectionable. The clause, originally, was confined to warehousemen who had the property of others committed to their care, and who could properly give a warehouse receipt; but now it is proposed to extend it to manufacturers of goods.

Mr. BLAKE. It is already extended.

AGRICULTURAL PRODUCTS.

Mr. BLAKE. I quite agree with the hon. gentleman that the amendment he suggests would be the way to put the farmers in just the position in which he proposes to place them. Let me give a practical illustration of the difficulties of the situation and of the difference between the two classes to which he refers. The manufacturer who gives a security note is, of course, in constant relations, perhaps too constant relations for the comfort of both, with his banker; and the banker, if he knows his business, keeps a pretty close eye upon the customer whose security note he has, and there must be always a good deal of trust and confidence in the business. The banker has confidence that the manufacturer, who is constantly disposing of his goods, will, notwithstanding this, keep in stock, on the whole, the security of manufactured stuff which is represented by the secured note. That is the position of the manufacturer, and that is the way in which the thing is worked. Then the banker if he knows his business, knows whether the manufacturer is keeping two banking accounts; and if the manufacturer clandestinely keeps a second account with another bank, he generally comes to grief, to the loss of one or both. There again you have the trust, the confidence, the watchfulness and vigilance which it is possible to apply to that class of cases. But these conditions do not apply to the farmer. He resides a little way, let us say, out of Kingston, where there are several banks, or a little way out of Toronto, where there are a great many banks. He may or may not have come into town, and at one of the fifteen or twenty banking offices may or may not have obtained a discount by giving his security note upon his grain or cattle. Who is to tell whether he has done so or not? How are you to know at any time whether he really owns the grain or cattle which he offers as security, or whether, if he wants to sell, they are his to sell. A degree of uncertainty necessarily exists in his case which does not exist in the other; and in order to enable the borrowing farmer, who has not credit enough in his own locality, to borrow without giving a chattel mortgage, every farmer in the country is to have the assumed title to his property placed in doubt and the facilities for the sale and disposal of his property considerably impeded.

Mr. KIRKPATRICK. Does a grain dealer buying grain go to a registry office to see whether a chattel mortgage is registered against it?

Mr. BLAKE. No.

Mr. BLAKE. I can assure the hon. gentleman (Mr. Sproule) that I did not make any observations

on his remarks with any sneering intent. I may say that I do not know of any common member of this House, and I can assure the hon. gentleman that, so far from regarding him as a common member, I regard him as a most uncommon member.

Mr. BLAKE. I suppose that, under clause 69, it would be possible for a bank, on the same condition and under the same circumstances under which it may use this interest in real estate to take as an additional security, the security of a timber limit; but I apprehend what the hon. gentleman wants is that the banks should be permitted to lend upon the security of timber limits directly and at once. That would be practically adopting, perhaps in the most objectionable form, the principle of land banks. Our banks are not based on the principle of land banks. That is not the principle of our present banking system. It is not to lend upon real security, or upon future, unrealised values. You do not allow a bank to lend upon the security of the most highly productive fee simple of valuable real estate, producing great rents. You allow it to take a mortgage, under certain circumstances, as additional security for its contract in ordinary business. You may do the same thing in reference to timber limits. If you introduce the principle of lending directly, on the security of a timber limit, why not allow the banks to lend directly on the fee simple of a warehouse, on the real property of any person, and you at once establish the principle of a land bank, contrary to that on which our banking system is based.

Mr. WALDIE. The fact heretofore is that the security was given on the logs, and unless the license to cut timber was clearly transferred with the logs, the property did not go together, and it has been held necessary for the banks to hold the license or the right to cut timber so as to continue their right in the lumber. It has been the common practice of the banks to make advances to manufacturers of lumber, who have purchased the right to cut lumber.

Mr. BLAKE. My hon. friend misunderstood me if he supposes I am objecting to that. I understand it is perfectly legitimate, that a bank which makes an advance to a manufacturer for the purpose of enabling him to cut his timber, should take as an additional security,

even now, the security of real estate. The hon. member for Frontenac however wants something more, but what definitely I do not know; but I assume it is this, that instead of making the transaction a legitimate banking transaction, which is an advance to a person in the course of his business, and on his general credit for the doing of work and upon the prospect of a *bond fide* mercantile operation, you are going to authorize an advance upon the security of his chattel interest, whatever it may be in real estate. That is not the principle of the present Act. The principle of the present Act is that you make it upon the personal security, and, with reference to the mercantile operation, having the right under certain circumstances to take as an additional security, a charge on real estate. But I am bound to say that this Bill seems to contemplate the statutory recognition of that which is new in law, though I fear not in practice, the loaning directly and primarily on chattels, instead of restricting the basis of loans as does the present law. This is a questionable extension.

Mr. KIRKPATRICK. I understand that timber limits require a great deal of capital to work them. The owner generally goes to a bank to obtain that capital, and it is for the security of the bank not only to have the security of the timber cut, but the security of the license.

Mr. BLAKE. So they have. I am told that half the limits in this country are in the hands of the banks.

On section 76,

Mr. BLAKE. Would it not be well to make it a written promise?

Mr. BLAKE. It rather strikes me as if the man would be liable, if he did not deliver possession to the bank of the goods, no matter for what reason they were not delivered. Suppose, for instance, they were burned up.

Mr. HALL. The non. delivery must be wilful.

Mr. BLAKE. The Act says "if he does not deliver to the bank possession thereof;" the word "wilful" does not appear.

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